

AMENDED IN SENATE JULY 1, 2009

AMENDED IN ASSEMBLY MAY 18, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1136

Introduced by Assembly Member Fong

February 27, 2009

An act to add Section 31760.8 to the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1136, as amended, Fong. County employees' retirement: optional settlements.

~~(1) The~~

The County Employees' Retirement Law of 1937 permits a member or retired member of a retirement system established pursuant to its provisions, prior to the time that the first payment is of any retirement allowance is made, to elect certain optional settlements, which operate to reduce the allowance payable to the member through his or her life and provide for a subsequent payment to another party or parties, including his or her spouse.

This bill would, upon adoption by a county, permit a retired member to revoke certain optional settlements if, at retirement, the retired member was unmarried or had been married less than one year, the retired member had retired before the county adopted other specified optional retirement settlements, and the application to revoke includes the signature of the designated beneficiary of the optional settlement; or a *written* declaration made under penalty of perjury, as specified. ~~By broadening the definition of the crime of perjury, the bill would impose~~

~~a state-mandated local program. The bill would provide a civil penalty for a person who knowingly provides false information in the declaration, to be brought at the option of a public prosecutor.~~ The bill would also require, if the designated beneficiary of the optional settlement is a spouse or domestic partner of the member, that the application for revocation evidence that person's agreement to the revocation. The bill would provide, pursuant to this revocation, that the retired member's allowance be adjusted prospectively and the spouse would be entitled to any provisions for which he or she may qualify as if an optional settlement had not been elected. The bill would prohibit the retired member, after revocation, from electing other optional settlements. The bill would provide that the retirement system has no obligation to locate or otherwise contact retired members who may qualify for a revocation. The bill would provide that any actions taken, as described above, do not excuse the obligation of a member to provide a continuing benefit to a former spouse pursuant to court order.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 31760.8 is added to the Government
- 2 Code, to read:
- 3 31760.8. (a) A retired member, in order to provide for his or
- 4 her spouse, shall be entitled to revoke an optional settlement elected
- 5 pursuant to Section 31761, 31762, 31763, or 31764 at the time of
- 6 retirement, if all of the following criteria are satisfied:
- 7 (1) The member retired on or before the date the board made
- 8 Sections 31760.2, 31785.1, or 31786.1 applicable in the county.
- 9 (2) At retirement, the member was unmarried or had been
- 10 married less than one year.
- 11 (3) The member's application satisfies the requirements
- 12 described in subdivisions (b) and (c).
- 13 (b) (1) An application for a revocation of an optional settlement
- 14 pursuant to this section shall include the signature of the designated

1 beneficiary of the optional settlement acknowledging the revocation
2 or shall include a written ~~declaration, made under penalty of~~
3 ~~perjury~~, declaration of one or more of the following as may be
4 applicable to the member:

5 (A) The beneficiary has no identifiable community property
6 interest in the benefit.

7 (B) The member does not know, and has taken all reasonable
8 steps to determine, the whereabouts of the beneficiary.

9 (C) The beneficiary has been advised of the application and has
10 refused to sign the written acknowledgment.

11 (D) The beneficiary is incapable of executing the
12 acknowledgment because of an incapacitating mental or physical
13 condition.

14 (2) The purpose of this subdivision is to notify the beneficiary
15 of the revocation of an optional settlement made by a member that
16 may affect the entitlement of the beneficiary.

17 (3) *A person who knowingly provides false information in the*
18 *written declaration submitted pursuant to paragraph (1) shall be*
19 *subject to a civil penalty of not less than one thousand dollars*
20 *(\$1,000) and not more than twenty-five thousand dollars (\$25,000),*
21 *in addition to any civil remedies available to the board. An action*
22 *to impose a civil penalty pursuant to this paragraph may be*
23 *brought by any public prosecutor in the name of the people of the*
24 *state.*

25 (c) In addition to the requirements of subdivision (b), if the
26 designated beneficiary of the optional settlement is a spouse or
27 domestic partner of the member, the application for revocation of
28 an optional settlement shall also evidence agreement to the
29 revocation by the spouse or domestic partner.

30 (d) After revocation, the member's retirement allowance shall
31 be adjusted to the amount he or she would have been entitled to
32 receive at retirement if his or her benefit had not been modified
33 by the optional settlement, adjusted by any cost-of-living increases
34 that would have been added to the retirement allowance. The
35 adjusted retirement allowance shall be effective on the first day
36 of the month following the month in which the member has
37 revoked the optional settlement. After revocation, the member's
38 spouse shall be entitled, as if no optional settlement had been
39 elected by the member, to any provision of this chapter for which

1 the spouse qualifies including, but not limited to, those provisions
2 provided pursuant to Sections 31760.2, 31785.1, or 31786.

3 (e) After revoking an optional settlement pursuant to subdivision
4 (a), a retired member shall not be entitled to elect any optional
5 settlement pursuant to this chapter.

6 (f) Notwithstanding any other provision of this chapter, if a
7 retired member elects to revoke his or her optional settlement
8 election pursuant to this section, the member's retirement
9 allowance shall only be adjusted prospectively. The adjusted
10 retirement allowance shall be effective on the first day of the month
11 following receipt of the member's signed revocation. The member
12 shall not be eligible to recover any payment retroactively for any
13 period between the effective date of his or her retirement and the
14 date of revocation.

15 (g) The retirement system has no obligation to locate or
16 otherwise contact retired members who may qualify for a
17 revocation under this section.

18 (h) No actions taken pursuant to this section excuse the
19 obligation of a member to provide a continuing benefit to a former
20 spouse or other person pursuant to court order.

21 (i) This section is not applicable in any county until the board
22 of retirement, by resolution adopted by a majority vote, makes this
23 section applicable in the county. The board's resolution may
24 designate a date, which may be prior or subsequent to the date of
25 the resolution, as of which the resolution and this section shall be
26 operative in the county.

27 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
28 ~~Section 6 of Article XIII B of the California Constitution because~~
29 ~~the only costs that may be incurred by a local agency or school~~
30 ~~district will be incurred because this act creates a new crime or~~
31 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
32 ~~for a crime or infraction, within the meaning of Section 17556 of~~
33 ~~the Government Code, or changes the definition of a crime within~~
34 ~~the meaning of Section 6 of Article XIII B of the California~~
35 ~~Constitution.~~